



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 5, 1998

Mr. John Lawhon  
General Counsel  
Texas Woman's University  
P.O. Box 425497  
Denton, Texas 76204-5497

OR98-1133

Dear Mr. Lawhon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114773.

Texas Woman's University (the "university") received a request for information about specific individuals connected with the College of Education and Human Ecology for the period beginning January 1, 1991, and ending January 31, 1998. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of documents.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that a discrimination complaint has been filed with the Equal Employment Opportunity Commission (the "EEOC"). You have provided this office with a copy of the complaint. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances that you have shown, we find that the university has met the first prong of the section 552.103(a) test. We also conclude that the requested information is related to the anticipated litigation. Therefore, the university may withhold from required public disclosure the requested information under section 552.103(a).

Generally, however, once records have been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the records. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/gle

Ref.: ID# 114773

Enclosures: Submitted documents

cc: Mr. Tom Dirickson  
Attorney at Law  
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Lewisville, Texas 75067  
(w/o enclosures)